

AS

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 96-149-C - ORDER NO. 96-722
OCTOBER 17, 1996

IN RE: Application of Winstar Wireless of) ORDER
South Carolina, Inc. for a Certifi-) GRANTING
cate of Public Convenience and) AUTHORITY
Necessity to Provide InterLATA and)
IntraLATA Interexchange and Private)
Line Service in South Carolina.)

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of Winstar Wireless of South Carolina, Inc. (Winstar Wireless, Winstar or the Company) to connect end-user to end-user locations, end-user to IXC points-of-presence (POPs), and IXC to IXC (or LEC) POPs as a carrier's carrier in South Carolina and to provide Private Line and Special Access Services within the State of South Carolina. A Stipulation was subsequently reached between Winstar Wireless and the South Carolina Telephone Coalition (SCTC) to amend the request for authority to territories served by BellSouth Telecommunications, Inc. (BellSouth) within the State of South Carolina. The Application was filed pursuant to S. C. Code Ann. §58-9-280 (1976), as amended, and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed Winstar Wireless to publish, one time, a prepared Notice of Filing in

newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Winstar Wireless' Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Winstar Wireless complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. Petitions to Intervene were filed by BellSouth, the Consumer Advocate for the State of South Carolina (the Consumer Advocate), SCTC, and the South Carolina Telephone Association (SCTA). The Stipulation between Winstar Wireless and SCTC was received into evidence as Hearing Exhibit 1.

The hearing was held on October 2, 1996, at 10:30 a.m. in the Commission's Hearing Room, with the Honorable Guy Butler, Chairman, presiding. Winstar Wireless was represented by Faye A. Flowers, Esquire and Robert G. Berger, Esquire; BellSouth was represented by Patrick Turner, Esquire; the Consumer Advocate was represented by Elliott F. Elam, Jr., Esquire; and SCTC was represented by Margaret M. Fox, Esquire. SCTA was not represented in this proceeding. The Commission Staff (the Staff) was represented by F. David Butler, General Counsel.

Winstar Wireless presented the testimony of Ralph A. Peluso in support of its Application. Peluso described Winstar's Application for a Certificate of Public Convenience and Necessity, the intrastate services to be offered by Winstar Wireless, the technical and managerial resources, and abilities of Winstar, and the financial resources of Winstar Wireless. Peluso also

commented on the public benefits of Winstar's proposed intrastate service.

According to Peluso, Winstar intends to provide high speed dedicated telecommunications services to government business and institutional users over its microwave wireless network. Consistent with applicable FCC regulations, Winstar's microwave network initially will be utilized principally to furnish interstate telecommunications services. In addition, to a more limited extent, and pursuant to this Commission's authorization, if granted, those same facilities will be utilized to provide intrastate intra-and interLATA non-switched high speed video data and voice telecommunications services. According to Peluso, Winstar Wireless' network will be able to be used to connect end-user to end-user locations, end-user to IXC POPs, and IXC POP to IXC or LEC POPs.

According to Peluso, Winstar has the technical and managerial resources necessary to operate its microwave network to provide customers in the State of South Carolina with high quality non-switched dedicated telecommunications services. Winstar states that it is financially qualified to provide these services. Peluso states that the granting of Winstar Wireless' Application will further the public interest by expanding the availability of technologically advanced telecommunications facilities with features such as security, survivability, and redundancy in the State of South Carolina. Further, Winstar Wireless' system will provide South Carolina customers with the option of selecting from

a range of services. Winstar states it belief that the public interest is served through competition in markets involving direct connections for customers via microwave facilities, and the Application presented is therefore in the public interest.

FINDINGS OF FACT

1. Winstar Wireless of South Carolina, Inc. is a Delaware corporation authorized to transact business in the State of South Carolina by the Secretary of State.

2. Winstar Wireless operates facilities-based interexchange telecommunications services as a carrier's carrier.

3. Winstar Wireless has the experience, capability, and financial resources to provide services as described in its Application, both as a carrier's carrier, and as a provider of Special Access and Private Line Services.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Winstar Wireless to provide intraLATA and interLATA channel service between two points within the State as a carrier's carrier. This Commission defines a carrier's carrier as providing non-switched point-to-point service for authorized telecommunications carriers to and from points-of-presence (POPs).

2. We believe that the guidelines heretofore adopted by this Commission for Interstate Fibernet JV, in Order No. 95-25, dated January 24, 1995, in Docket No. 94-424-C apply in the present case. We believe as we did in that case that it is in the

public interest, that Winstar Wireless be allowed to carry both interLATA and intraLATA traffic for all types of telecommunications carriers on a carrier's carrier basis (i.e., non-switched point-to-point telecommunications service), so long as the telecommunications carrier has the authority to carry such traffic, and, further, telecommunications carriers having originating and terminating interLATA traffic may transport such traffic between an interLATA carrier's POP and a telecommunications carrier's carrier switch by the appropriate means of their choice.

3. When traffic is transported between two connecting telecommunications carriers, the point of connection should be negotiated in good faith and agreed to by the carriers. However, if no agreement is reached either carrier may seek a final determination from the Commission.

4. The Commission agrees with and adopts the Stipulation between Winstar Wireless and SCTC, and it is hereby incorporated by reference.

5. With regard to Winstar Wireless' request to provide Private Line and Special Access Services, we agree with the Company's witness, that the granting of this portion of its authority would provide security, survivability, and redundancy in the State of South Carolina, as well as competition and an expanded choice between services and providers. We hold that the Commission must examine 1) the prevention of wasteful duplication of facilities and services, and 2) the protection of the consuming

public from receiving inadequate service. (See Order on American Communications Services, Inc., Order No. 95-1459 in Docket No. 94-712-C, dated August 31, 1995.) We hold that the testimony presented in this case shows that no wasteful duplication of facilities and services would result from the granting of this Certificate, rather the consuming public would not only be protected from receiving inadequate service, but would have the opportunity for reasonable additional service that it would not have had, should the Certificate at issue not have been granted. Clearly, the criteria listed in the ACSI Order as stated above are satisfied. We note that an applicant, to the extent it may be required to by the Commission, will participate in the support of universally available telephone services at affordable rates pursuant to S. C. Code Ann. §58-9-280 (B)(4). We note that this Commission has yet to speak on this subject, however, when it does, the applicant will be required to comply with any Commission standards that may be set out pursuant to the statute as quoted above.

6. Winstar Wireless shall in compliance with Commission regulations maintain an authorized utility representative who is prepared to discuss customer relation (complaint) matters. Winstar Wireless shall file the name, address, and telephone number of this representative with the Commission within ten (10) days of receipt of this Order, and shall promptly notify the Commission in writing if the representative is replaced.

7. The Commission hereby adopts all tariff changes agreed

upon between the Company and the Staff.

8. The Commission adopts a rate design for Winstar Wireless for its services which includes only maximum rate levels for each tariff charge, rate structure incorporating maximum rate levels with a flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

9. Winstar Wireless shall not adjust its rate below the approved maximum level without notice to the Commission and to the public. Winstar Wireless shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of this changes. However, the public notice requirement is waived, and therefore not required for reductions below the maximum cap and instances which do not affect the general body of subscribers who do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications Corporation etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of the Company subscribers shall constitute a general ratemaking proceeding, and will be treated in accordance with the Notice and Hearing provisions of S. C. Code Ann. §58-9-540 (Supp. 1995).

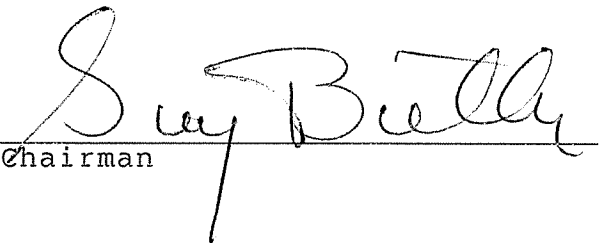
10. Winstar Wireless shall files it revised maximum tariff and an accompanying price list within thirty (30) days from

receipt of this Order. Revised tariffs shall be consistent with the findings of this Order and shall be consistent with the Commission's rules and regulations.

11. Winstar Wireless shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

12. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

DOCKET NO. 96-149-C - ORDER NO. 96-722
OCTOBER 17, 1996
ATTACHMENT A

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS
FOR INTEREXCHANGE COMPANIES AND AOS'S

COMPANY NAME

FEI NO.

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

- (1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12
MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.
- * THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION
WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX,
CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.
- (4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR
ENDING _____.
- * THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.
- (5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS
WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT
(SEE #3 ABOVE).

SIGNATURE

NAME (PLEASE TYPE OF PRINT)

TITLE